

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

Patent Application

Inventor(s): Jan I. Ben et al.
Case: Ben 2-16-1-10 (ALU/125969)
Examiner: SAINT CYR, Leonard
Confirmation No.: 7452

Serial No.: 10/629,486
Filed: July 29, 2003
Group Art Unit: 2626

Title: CONTENT IDENTIFICATION SYSTEM

**MAIL STOP APPEAL BRIEF-PATENTS
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REPLY BRIEF

SIR:

Appellants submit this Reply Brief to the Board of Patent Appeals and Interferences in response to the Examiner's Answer, dated March 30, 2010, in the Appeal of the above-identified application.

The Commissioner is authorized to charge any fees due, including extension of time and excess claim fees, to counsel's Deposit Account No. 50-4802/ALU/125969.

REMARKS

Appellants' response to the Examiner's Answer is provided herein below.

Section 10 (Response to Arguments)

In Section 10 (Response to Arguments) of the Examiner's Answer, the Examiner provides answers to the arguments made by the Appellants in the Appeal Brief filed for the above-identified application. The Examiner's answers to Appellants' arguments are addressed below (where sub-sections identify the portions of the Examiner's Answer to which the Appellants are responding).

A. On page 22 of the Response to Arguments section, the Examiner argues:

"Appellants argue that neither Weare et al., nor McEahern nor Logan et al. storing [sic] at least 30 minutes worth of segments (Appeal Brief, pages 16-21). The Examiner disagrees, and points out that Logan et al., suggest that limitation by disclosing "the feature vectors corresponding to the sequence of frames are organized into segments...contiguous sequences of feature vectors may be combined into corresponding segments that are 1 second duration...Obviously segments of sizes other than 1 second may be utilized" (col. 5, lines 2-15; col. 1, lines 8-11). Utilizing segments of sizes other than 1 second duration suggests storing at least 30 minutes worth of segments, since in multimedia applications, such as television programs, a longer segment duration is required to identify a media entity, because of the overall length duration of certain TV programs."

1. *The Examiner's Assertions Do Not Support The Conclusion Of obviousness.*

Appellants respectfully submit that the key to supporting a rejection under 35 U.S.C. §103 is the clear articulation of the reasons why the claimed invention would have been obvious. The analysis supporting such a rejection must be explicit. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006), cited with approval in KSR Int'l Co. v. Teleflex, Inc., 126 S. Ct. 2965 (2006); see also MPEP §2141.

Here the Examiner asserts that:

"Utilizing segments of sizes other than 1 second duration suggests storing at least 30 minutes worth of segments, since in multimedia applications, such as television programs, a longer segment duration is required to

identify a media entity, because of the overall length duration of certain TV programs.”

The rationale that a longer segment duration is required in multimedia applications runs counter to the disclosure provided in the specification. On page 12, beginning at line 1, the specification discloses:

“However, it is advisable to store additional segments, because, as noted above, the selected segments in the database may have time gaps between them. In one embodiment of the invention, it has been found sufficient to store 30 minutes worth of segments. This is because, at certain points in the matching process, the matching process may take more time than the segment obtaining process, e.g., when the key segment is matched, and so the matching process can fall behind the segment obtaining process, while at other points, e.g., when the key segments do not match, the matching process is faster than the segment obtaining process. Therefore, it is best to have a sufficiently large buffer so that the matching process has a chance to catch up.”

In conclusion, the Examiner’s rationale supporting the conclusion of obviousness is flawed. Appellants respectfully submit that there is no suggestion in Weare et al., in view of McEahern and Logan et al. that would have resulted in Appellants’ invention as provided in independent claim 1.

B. On page 22 of the Response to Arguments section, the Examiner argues:

“Appellants argue that neither Weare et al., nor McEahern nor Logan et al. means searching a database for substantially matching segments, said database having stored therein segments of media programs and respective corresponding program identifiers (Appeal Brief, pages 17-21). The Examiner disagrees, since Logan et al., disclose “By identifying those segments of the audio input (e.g., the first half of the song being summarized) that share similar cepstral features, the system has been able to automatically decipher the song’s structure” (col. 6, lines 52-57).

Appellants respectfully bring to the Examiner’s attention that when a claim utilizes “means for” recitations, the Examiner is required to consider the specific structure described in the specification to interpret these limitations. (See MPEP §2181). However, as can be seen from above passage, the Examiner states that “By identifying those segments of the audio input (e.g., the first half of the song being summarized) that

share similar cepstral features, the system has been able to automatically decipher the song's structure." Again, the "means for" limitation recited in the invention cannot be broadly interpreted by the Examiner to read on the implementation taught by the cited references. *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). The Court in Donaldson stated:

Per our holding, the "broadest reasonable interpretation" that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination.

The Examiner's approach is opposite to the Court's mandate.

Appellants have thus shown that there are missing claimed features not taught or, suggested by the cited references, and thus the claims have been erroneously rejected under 35 U.S.C. §103(a). The Examiner failed to establish a prima facie showing of obviousness.

CONCLUSION

Appellants submit that all of the claims presently in the application are allowable.

For the reasons advanced in Appellants Appeal Brief, Appellants respectfully urge that the rejection of claims 1-19, 21-37 and 41 is improper. Reversal of the rejection of the Final Office Action is respectfully requested.

Respectfully submitted,

Dated: _____

4/15/10



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